

CRIMINAL JUSTICE ACT ATTORNEY MANUAL

<i>Introduction</i>	<u>2</u>
<i>Composition and Management of CJA Panel.</i>	<u>2</u>
 <i>Appointment of Counsel.</i>	<u>3</u>
<i>Multiple Defendants in One Case</i>	
<i>One Defendant in Multiple Cases</i>	
<i>Appointment of Second Counsel</i>	
<i>Continuation of Appointment</i>	
 <i>Compensation and Expenses.</i>	<u>4</u>
<i>Itemization Requirements</i>	
<i>Record Keeping</i>	
<i>Hourly Rates</i>	
<i>Statutory Maximums</i>	
<i>Other Issues</i>	
 <i>Compensation in Excess of Statutory Maximum</i>	<u>5</u>
<i>Substitution of Counsel.</i>	<u>6</u>
<i>Interim Vouchers.</i>	<u>6</u>
<i>Travel and Out-of-Pocket Expenses.</i>	<u>7</u>
<i>Mileage</i>	
<i>Government Travel Account</i>	
 <i>Non-Custodial Transportation of Defendant..</i>	<u>8</u>
<i>Other Expenses</i>	<u>8</u>
<i>Non-reimbursable Items</i>	
 <i>Computer Hardware and Software</i>	<u>9</u>
<i>Legal Research Expenses..</i>	<u>10</u>
 <i>Subpoenas and Witnesses.</i>	<u>10</u>
<i>Fact Witnesses and Depositions</i>	<u>11</u>
 <i>Interpreters.</i>	<u>11</u>
 <i>Investigative Expert or Other Services..</i>	<u>12</u>
<i>Limitations: With or Without Prior Approval</i>	
<i>Ex Parte Motion</i>	<u>13</u>
<i>Ex Parte Order</i>	<u>13</u>
 <i>Psychiatrists, Psychologists</i>	<u>14</u>
<i>CJA or DOJ Chart</i>	
 <i>Appeals.</i>	<u>17</u>
<i>CJA Transcripts</i>	<u>18</u>
<i>Reimbursement of Transcripts..</i>	<u>18</u>
<i>Public Access to Court Transcripts.</i>	<u>18</u>
<i>Transcript Redaction Process</i>	
<i>Personal Identifiers</i>	

Criminal Justice Act Panel Attorney Manual

This manual is provided as a resource to assist the Criminal Justice Act (CJA) court-appointed attorney with administrative duties related to the court appointment.

Each panel attorney is referred to the Criminal Justice Act Plan for the District of Idaho, **General Order #210** (September 2006), which is on file in the U.S. Clerk's Office, and available on-line at www.id.uscourts.gov.

Composition and Management of CJA Panel

The CJA Panel is recommended by a Selection Committee and approved by the Court. The panel is designed to be large enough to provide a sufficient number of experienced attorneys to handle the CJA case load, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation. Members serve at the pleasure of the Court.

Attorneys who wish to be a member of the Idaho CJA panel must be "Registered Participants" in the District of Idaho's Electronic Case Filing (ECF) system. Additionally, CJA panel attorneys should be familiar with the **Electronic Case Filing Procedures** governing e-filing in the District of Idaho.

Administration and management of the CJA Panel is centralized in the Clerk's Office to insure that counsel are appointed as expeditiously as possible, appointments are equitably distributed and information on availability of counsel is maintained.

Appointments are made in a manner which results in both a balanced distribution of appointments among members of the CJA Panel and quality representation for each CJA defendant. These objectives are accomplished by making appointments on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, or geographical considerations.

Each attorney is uniquely identified in the automated payment system by their Social Security Number. For purpose of reporting taxable income to the Internal Revenue Service, attorneys may use their firm Tax ID number. Questions regarding the appropriate use of these numbers should be directed to the Clerk's Office.

Appointment of Counsel

All initial appointments are made to the Federal Defender's Office. The defender's office will notify the Clerk's Office whenever their office is unable to represent a defendant. The Clerk's Office will then immediately locate counsel from the CJA Panel.

Multiple Defendants in One Case: Unless good cause is shown, separate counsel are appointed for each defendant in a single criminal case. In the event an attorney is appointed to represent joint defendants, a separate CJA 20 voucher is prepared for each defendant and a separate statutory maximum applies for each defendant represented. The time and expenses claimed should be prorated between each defendant.

In cases where one attorney is appointed to represent multiple material witnesses, one voucher is prepared and one maximum applies.

One Defendant in Multiple Cases: An attorney may be appointed to represent one defendant in more than one case. A separate CJA-20 voucher will be prepared on each case. The time and expenses claimed should be prorated between the cases.

Appointment of Second Counsel: An additional attorney may be appointed in a capital case if the court finds it is in the interest of justice. At least one of the attorneys must meet the requirements listed in 21 USC §848(q). Additional counsel may be appointed in complex or extended cases. Motion must be made to the presiding judge seeking payment of co-counsel before payment can be made.

A CJA-appointed counsel may use the services of an associate counsel in out-of-court time without prior approval from the court. It may be at the discretion of the court to question excessive assistance from associates.

Continuation of Appointments: The appointment of an attorney continues until the conclusion of the case, or another attorney is appointed or appears as retained counsel. Counsel will receive a new voucher from the Ninth Circuit if the case proceeds on appeal. If the case is appealed to a District Judge from a judgment rendered by the magistrate judge, a new voucher will be prepared by the District Court.

Likewise, if a case is remanded to the District Court from the Ninth Circuit, the attorney appointed to handle the appeal will be deemed appointed in the District Court matter and a new voucher will be prepared by the District Court.

Absent special circumstances, whenever a case is transferred to another district such as under Rule 5, 20, or 21 of the Federal Rules of Criminal Procedure, a new appointment is completed in the transferee district.

Compensation and Expenses

The **CJA 20 voucher** is the form used for the compensation and reimbursement of expenses to appointed counsel. A billing statement itemizing in-court and out-of-court time, as well as expenses must be attached to all vouchers submitted.

Vouchers are to be submitted to the Clerk's Office in Boise no later than 45 days after the final disposition of the case. Every effort should be made to submit claims as soon as possible upon completion of services rendered.

Itemization Requirements: Service hours must be reported in **tenths of hours**. Failure to do so may result in the voucher being returned for correction. In addition, the hours must be categorized on the front of the voucher. The billing statement should be categorized to correspond with the items listed on the voucher.

Record Keeping. Appointed counsel must maintain contemporaneous time records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

Proration of Claims: When a defendant is charged in one indictment with severable counts, one voucher is prepared and one maximum applies under Subsection (d)(2) of the Act, whether or not the counts are severed for trial. When a defendant is charged in two or more cases, a voucher is prepared and a separate maximum applies for each case, whether or not the cases are consolidated for trial.

Whenever appointed counsel submit separate vouchers, time spent in common to more than one case or defendant must be prorated between the vouchers. Case numbers and/or defendant names should be cross-referenced on the supporting billing statements. Time spent exclusively on any one case or defendant may properly be claimed on the voucher for that specific case or defendant.

Hourly Rates: Subsection (d)(1) of the Act, as amended by the CJA Revision of 1986, authorizes the Judicial Conference to increase annually all hourly rate maximums. Hourly rate maximums will be adjusted automatically each year, contingent upon the availability of sufficient funds. The new rates will apply with respect to services performed on or after the effective date.

The Clerk's Office will notify CJA counsel of increases in rates.

Maximum Compensation: The Judicial Administration and Technical Amendments Act of 2008, amended subsection (d)(2) of the CJA to provide for the case maximums to increase "simultaneously" with aggregate changes in the maximum attorney hourly compensation rate. The case compensation limits are not applicable in federal capital cases and in death penalty federal habeas corpus proceedings.

Other Issues:

- In-Court time should be limited to that time specifically spent in Court. All other time may be included in the Out-of-Court category.
- Time claimed for acceptance of the appointment or for preparation of the voucher will not be allowed.
- Appointed counsel shall not accept a payment from or on behalf of the person represented without authorization by the presiding judge. If such payment is authorized, it is to be deducted from the claim to be approved by the Court under Subsection (d) of the Criminal Justice Act.

Compensation in Excess of Statutory Maximum

Payment in excess of the statutory maximum may be requested in "extended" or "complex" cases. Relevant factors may be:

- The number of defendants in the case.
- Unusual characteristics of the defendant (unable to speak English, mentally deficient, particularly uncooperative).
- Location of defendant.
- Type and number of crimes charged.
- Complexity or novelty of legal issues.
- Number of witnesses presented by all parties.
- Amount of pretrial discovery and investigation required.
- Number of pretrial motions; length of hearings; nature of hearings.
- Amount of trial preparation required.
- Was a trial held.
- Length of trial.
- Length of sentencing hearing; complexity of issues; severity of potential sentence.

Counsel claiming payment in excess of the statutory maximum shall submit with the voucher, a CJA-26 form, which is a detailed memorandum supporting and justifying that the representation given was in an extended or complex case. In any case where the claim is in excess of the statutory maximum, the Chief Judge of the Ninth Circuit must approve payment.

Substitution of Counsel

Counsel may only be substituted by an Order of the Court. If the court appoints a panel attorney, the person so appointed -- not another attorney in the firm -- shall represent the defendant at all stages of the proceeding unless, upon petition to the court, a substitute appointment is granted. This policy applies to the out-of-court time expended for brief writing and research completed by the attorney, as well as all in-court appearances, though associate counsel may assist from time to time.

Interim Vouchers

Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to an individual whose services are obtained pursuant to subsection (e) of the Act. The interim payment option is designed to strike a balance between the interest in relieving CJA attorneys of financial hardships *in extended and complex cases*, and the practical application of the statutorily imposed responsibility of the judges.

Appointed counsel may petition the court for payment of interim vouchers. A motion should be filed defining the extended difficulty and/or financial hardship to counsel caused by the case. Review the section on *Compensation in Excess of Statutory Maximum* for definitions of “extended” and “complex.” The motion should not be filed under seal and should be accompanied by a **proposed order**.

In the District of Idaho, interim periods typically are no less than two months beginning at the first of the month of the initial appointment and continuing thereafter. Pursuant to **General Order #231** (December 2008), interim CJA-20 vouchers shall not be submitted to the court for payment if the combination of hours and expenses does not exceed \$2,000, unless it is a final payment.

Travel and Out-of-Pocket Expenses

Travel and out-of-pocket expenses are not included in the statutory maximums. All expenses claimed which are \$50.00 or over must be accompanied by receipts.

Travel Compensation may be approved for time spent in necessary and reasonable travel. Such compensation is at a rate not to exceed the rate provided in Subsection (d) of the Act for "time reasonably expended out-of-court."

Mileage Claims Mileage may be claimed for use of privately-owned vehicle. This is similar to the rate claimed by government employees and is subject to change. Please check with the Clerk's office for current rate. Mileage should be itemized by listing the following:

- particular locations traveled to
- number of miles traveled on each date; and
- date of each travel event

Accordingly, expenses incurred for meals and lodging may be claimed when travel is required for *an overnight stay away from home*. Though per diem in lieu of subsistence is not allowable, travelers should be guided by the prevailing limitations existing in the Federal Judiciary Travel Regulations. Please contact the clerk's office to inquire on the rate for the traveler's place of destination prior to travel. The Court in this District requires advance authorization for counsel's expenses and travel which would be in excess of that which is ordinary and prudent.

Government Travel Account CJA attorneys and experts are authorized to obtain government travel rates when providing representation under the Criminal Justice Act.

Attorneys and experts wishing to travel on the Government Travel Account (GTA) should use the following procedures:

- Counsel shall fax to the Clerk's Office a **Request for a Travel Authorization** (located on the court's website).
- A Travel Authorization will be issued by the court and sent to the traveler and the authorized Government Travel agency.
- The Travel Authorization is an official government document and should enable the traveler to obtain government rates at hotels as well.
- After the authorization has been obtained, the attorney/expert shall call the authorized government travel agency at its toll free number indicated in the Travel Authorization to make reservations
- The airline tickets will be paid by the court.
- Payment of hotel costs are not charged to the GTA account but are paid by the traveler and reimbursed on the CJA voucher.
- Travel authorization in appellate cases must be arranged by the circuit clerk's office.

Non-Custodial Transportation of Defendant

Court-appointed counsel cannot be reimbursed for any transportation costs of the defendant. Defendants who reside a great distance from the court may make an Application for Non-custodial Transportation by the U.S. Marshal Service. The Court will require the defendant to verify a financial status of indigency.

Other Expenses

Out-of-pocket expenses reasonably incurred may be claimed on the voucher and must be itemized.

- Cost for in-house photocopying in excess of 15 cents per page is not authorized.
- Fax costs may be claimed if accompanied by the billing showing the cost of each transaction. A per page fee can not be claimed.

Non-Reimbursable Items Appointed counsel may not claim reimbursement for the following:

- General Office Overhead. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances, personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.
- Items of Personal Nature for or on behalf of the person represented, such as purchasing new clothes or having clothing cleaned, getting a haircut, cigarettes, candy or meals, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation and are not allowed. For instance, assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children, assisting the defendant in executing probation, or providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc.
- Filing Fees. Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself.
- Printing of Briefs. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, "xeroxing," or similar copying service is reimbursable.
- Service of Process. Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses, are not payable out of the CJA appropriation but are governed by Fed. R. Crim. P. Rule 17 and 28 U.S.C. § 1825. Please see the section on **Subpoenas and Witnesses**.

- Taxes. Taxes paid on attorney compensation received pursuant to CJA, whether based on income, sales or gross receipts, are not reimbursable expenses.
- Investigation or Other Services expenses under Subsection (e) of the Act shall not be considered out-of-pocket expenses. Employment of paralegals to assist in particular project must be claimed as expert services. Please review the section on expert services for further direction. Claims for these services should be submitted on CJA Voucher 21 form.

Computer Hardware and Software

Providing an adequate defense case may require CJA panel attorneys to utilize computer hardware or software not typically available in a law office. In such cases, counsel may apply to the court for authorization of CJA funds for the acquisition of such property.

Before seeking court approval for any computer hardware or software with a cost exceeding \$500, or for the utilization of computer systems or automation litigation support personnel or experts with an expected combined cost exceeding \$10,000, appointed counsel must consult the Office of Defender Services for guidance and inform the court in writing of the Office of Defender Service's advice and recommendation regarding counsel's proposed expenditure.

The acquisition of the computer hardware and/or software, shall be made by a federal defender organization designated by the Office of Defender Services, or by the Office of Defender Services itself, and shall remain the property of the United States. While computer hardware or software is being used by counsel, information contained on the hardware or software may be confidential work product and may also be protected by attorney-client privilege. Upon the completion of the case, the computer hardware and software must be returned in good condition, after all case-related materials have been removed, to a federal defender organization designated by the Office of Defender Services. Unless otherwise required by the court or law, counsel should retain copies, electronic or otherwise, of the case-related materials for the client's file.

Legal Research Expenses

Law Student Assistance The cost of employment of a law student for research may NOT be considered an out-of-pocket expense. Please see Expert Services section for further direction.

Computer Assisted Research Computer assisted legal research may be allowed as a reimbursable expense. Whenever counsel incurs charges for computer assisted legal research, counsel should attach to the voucher the following:

- 1) a brief statement setting forth the issue or issues that were the subject matter of the research; and
- 2) a copy of the bill or a statement used by counsel showing billing of computer assisted research expense.

If the computer-assisted research charges are something the law firm has built into the normal rate charged to other clients, the attorney would not be able to claim those costs in the CJA voucher. This is office overhead. If the attorney routinely bills clients with a prorated claim of the total bill, then the CJA attorney will be able to claim it on the CJA voucher as long as:

- the research was done by the appointed counsel, and
- the bill can be prorated.

Subpoenas and Witnesses

Service of process such as witness fees, travel costs and expenses for service of subpoenas are not reimbursable expenses. The United States Marshal serves all subpoenas for the government and for the defendants with court-appointed counsel, if so ordered by the Court. Do not hire a process server to serve subpoenas. (Refer to Federal Rule of Criminal Procedure 17(b).)

Before subpoenas can be served at government expense, it is necessary for court-appointed attorneys to seek approval from the appropriate Judge. An **Ex Parte Application** and **Proposed Order** should be filed listing the names of the witnesses to be subpoenaed and their addresses. This should be accompanied by the completed subpoenas ready for issuance by the Court.

The Marshal's payment form, the Fact Witness Voucher, will be supplied to the appointed counsel for each witness subpoenaed. The voucher shall be prepared by appointed counsel for each witness prior to the appearance of those witnesses in the Court.

Counsel shall be responsible for completing the portion above "Part I" and sections A and B of Part I. **Do not sign the attendance certification.** After testifying, the witness should present the voucher to the Judge's Courtroom Deputy. The voucher will then be submitted to the U.S. Marshal's Office for payment.

Fact Witnesses and Depositions

Fees and expenses of fact witnesses for defendants proceeding under the CJA are paid by the Department of Justice. Fed. R. Crim. P., Rule 17(b); 28 U.S.C. § 1825. Section 1825 of Title 28, United States Code, specifically provides for the payment of witness fees by the Department of Justice in all federal criminal proceedings, and in proceedings for a writ of habeas corpus or in proceedings under section 2255 of that title. If advance witness travel funds are required, the court should issue the subpoena order, so stating, to authorize the travel advance by the U.S. Marshal Service expenses will not be paid from CJA funds.

Depositions are covered by the Federal Rules of Criminal Procedure, Rule 15, rather than 18 U.S.C. § 3503. Expenses incurred in the taking of fact witness depositions (notarial fees, interpreters, transcripts, etc.) are paid by the Department of Justice, regardless of which party requested the deposition. The costs of attendance of *fact witnesses* at the deposition are paid by the Department of Justice under Rule 17 (b). The costs of attendance of *expert witnesses* for the defense are paid under the Criminal Justice Act (CJA-21). Expenses incident to attendance of counsel and the defendant at the deposition are paid by the Department of Justice if the Government is the requesting party. The CJA pays for these expenses if the depositions are at the instance of the defense. However, it should be noted that the presence of the defendant is not essential to defense depositions since the confrontation clause only requires the defendant's presence if the depositions are intended to be used against him.

In habeas corpus and 28 U.S.C. § 2255 cases, the Court may order the state or the Government to pay the "expenses of travel and subsistence and fees of counsel" to attend the taking of a deposition at the request of the state or Government. Rules governing Sections 2254 and 2255 cases in U.S. District Courts, Rule 6.

Interpreters

- The Clerk of Court shall maintain a local roster of certified, professionally qualified and language skilled interpreters and shall provide assistance to parties in locating available interpreters.
- Interpreters for all criminal court hearings are provided by the Court and payment is made by the Clerk's Office. The Interpreter is appointed to the case by the presiding judicial officer as required by 28 USC §1827(d)(1), and unless good cause is shown, should handle all required interpreting services in that case.
- Interpreters used while taking material witness depositions are scheduled by the United States Attorney and payment is made by the Department of Justice.
- Interpreters required by court-appointed counsel when conversing with their clients, witnesses, etc. are arranged by the attorney and billing is submitted on a CJA-21 voucher to the Clerk's Office for payment.

General Order #225 (July 2008) has established the hourly rate for out-of-court time for Interpreters, plus expenses, for certified or professionally-qualified interpreters .

Investigative Expert or Other Services

Investigative, expert or other services necessary to adequate representation, as authorized by subsection (e) of the Act, shall be available to persons eligible under the Act. Claims for these services should be submitted on **CJA-21 Voucher form**.

All claims for services other than counsel, under subsection (e) of the Act, should include the following:

- a statement as to type of service, dates and time expended.
- an explanation of fee arrangement (i.e hourly rate, per diem, etc.)
- an itemized statement of all expenses and supporting documentation for those expenses in excess of \$50.00.

Limitations

With Prior Authorization, compensation for investigative, expert or other services is limited to \$1,600 per organization or individual, exclusive of reimbursement of expenses reasonably incurred. A separate authorization should be obtained for each type of service obtained for each defendant served. Payment in excess of \$1,600 (exclusive of expenses), must be certified by the presiding judicial officer and approved by the chief judge of the Ninth Circuit. *If it is anticipated that the compensation will exceed the statutory maximum, advance approval should be obtained from the court. Applications for employment of experts and payment in excess of statutory maximum should indicate the rate being charged, the number of hours anticipated and an estimated total dollar amount for the service requested.*

Please review the “Employing Expert Services in Excess of Statutory Maximum” instructions for complete information.

Without Prior Authorization, compensation for investigative, expert or other services should not exceed \$500 plus reasonable expenses. This \$500 limit may be waived however if the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization.

Requirement for Prior Approval

- If the total expert fee will be less than \$500, prior approval is not required.
- If the total expert service fee will be less than the \$1,600, approval of the Ninth Circuit is not required.
- The \$500 limit may be waived if the presiding judge finds, in the interest of justice, that timely procurement of necessary services could not await prior authorization. An affidavit of explanation from the attorney should be included at the time that the CJA-21 voucher is submitted.

Ex Parte Motion The ex parte motion and proposed order should include:

- Hourly rate being charged by expert and number of hours anticipated,
- If hourly rate is above the “going rate”, what special skills or expertise this expert possess that warrants a higher rate,
- Total estimated cost, and
- Any extra expenses, such as travel expenses, or lab fees.
- The motion (or supporting document) should include name, address and TIN# of the expert being employed

Ex Parte Order Last paragraph of the order should read:

The estimated compensation or fee in excess of the maximum set forth in subsection (e)(3) of the Criminal Justice Act appears necessary to provide fair compensation for services of an unusual character or duration, and therefore, advance authorization in the amount of \$_____ is approved.

Ninth Circuit signature line inserted as follows:

Advance authorization is hereby approved in the amount of \$_____.

Dated: _____

CHIEF JUDGE.....

UNITED STATES COURT OF APPEALS

Final Step After the authorizations have been received, the Court will file the Ex Parte Order and the expert may begin services.

Government Travel for Experts Experts wishing to travel on the GTA account should use the following procedures:

- Counsel shall fax to the Clerk's Office a Request for a Travel Authorization.
- A Travel Authorization will be issued by the court and sent to the traveler and the authorized Government Travel agency.
- The Travel Authorization is an official government document and should enable the traveler to obtain government rates at hotels as well.
- After the authorization has been obtained, the attorney/expert shall call the authorized government travel agency at its toll free number indicated in the Travel Authorization to make reservations
- The airline tickets will be paid by the court.
- Payment of hotel costs are not charged to the GTA account but are paid by the traveler and reimbursed on the CJA voucher.

Psychiatrists, Psychologists

Chapter 313 of Title 18, as amended by the Insanity Defense Reform Act of 1984 (Chapter IV of the Comprehensive Crime Control Act of 1984), provides for court-directed psychiatric or psychological examination of individuals in connection with the various proceedings to determine mental condition which are authorized under the chapter. The functions of these separate proceedings are to determine:

- (1) the mental competency of a defendant to stand trial (18 USC §4241);
- (2) insanity at the time of offense (§4242);
- (3) the mental condition of an acquitted person hospitalized following a finding of not guilty only by a reason of insanity (§4243);
- (4) the present mental condition of a convicted defendant (§4244);
- (5) the present mental condition of an imprisoned person who objects to transfer to a treatment facility (§4245); and
- (6) the present mental condition of a hospitalized person due for release (§4246).

CJA funds are used to pay for psychiatric and related services obtained upon the determination that the services are "necessary for an adequate defense." These are "defense" services, where the defendant selects the expert and controls the disclosure of the expert's report. It is important to note that psychiatrists and related experts may be used in many circumstances in which payment is made from a source other than the CJA. The Chart summarizes payment responsibility for the various circumstances in which psychiatric and related services are utilized. The limitations of \$1,600 and \$500 apply to compensation claims submitted for "defense" services to be paid by the CJA appropriations. Compensation claims for psychiatric and related services to be paid by the Department of Justice should be referred to the U.S. Attorney or Assistant U.S. Attorney prosecuting the case.

<u>IF...</u>	<u>CJA</u>	<u>DOJ</u>
① 18 USC §4241: To determine mental competency to stand trial. a. Examination Costs b. Testimony Costs for examiner if called at hearing c. Testimony Costs for examiner if called at trial.	 c. YES , if witness appears on behalf of defense	a. YES , regardless of which party requests, including examination on court's own motion. b. YES , regardless of which party calls as witness. c. YES , if witness appears on behalf of government.

<u>IF...</u>	<u>CJA</u>	<u>DOJ</u>
<p>② 18 USC §4242: To determine existence of insanity at time of offense</p> <p>a. Examination Costs</p> <p>b. Testimony Costs for Examiner if called at trial.</p>		<p>a. YES</p> <p>b. YES, regardless of which party calls as witness.</p>
<p>③ CJA subsection (e): To Determine existence of insanity at time of offense.</p> <p>a. Examination Costs</p> <p>b. Testimony Costs for Examiner if called at trial.</p>	<p>a. YES</p> <p>b. YES</p>	
<p>④ 18 USC §4243: To determine mental conditions of hospitalized person found not guilty only by reason of insanity.</p> <p>a. Examination Costs.</p> <p>b. Testimony Costs for Examiner if called at hearing.</p>		<p>a. YES</p> <p>b. YES, regardless of which party calls</p>
<p>⑤ 18 USC §4244: To determine mental condition of convicted person suffering from mental disease or defect.</p> <p>a. Examination Costs</p> <p>b. Testimony Costs for Examiner if called at hearing.</p>		<p>a. YES</p> <p>b. YES, regardless of which party calls.</p>
<p>⑥ 18 USC §4245: To determine mental condition of imprisoned person.</p> <p>a. Examination Costs</p> <p>b. Testimony Costs for Examiner if called at hearing.</p>		<p>a. YES, including costs of additional examiner selected by imprisoned person in accordance with 18 USC §4247(b).</p> <p>b. YES, regardless of which party calls, including additional examiner selected by imprisoned person in accordance with 18 USC §4247(b).</p>

<u>IF...</u>	<u>CJA</u>	<u>DOJ</u>
<p>⑦ 18 USC §4246: To determine mental condition of hospitalized person due for release.</p> <p>a. Examination Costs.</p> <p>b. Testimony Costs of Examiner if called at hearing.</p>		<p>a. YES, including costs of additional examiner selected by hospitalized person in accordance with 18 USC §4247(b).</p> <p>b. YES, regardless of which party calls, including additional examiner selected by hospitalized person in accordance with 18 USC §4247(b).</p>
<p>⑧ Examination of a person in custody as a material witness</p>		YES , under all circumstances
<p>⑨ Examination and Testimony Costs for expert witnesses not appointed under 18 USC §§4241, 4242, 4243, 4244, 4245, 4246</p>	YES , if requested by the defense	YES , if requested by the government, or if appointed as an independent expert on Court's own motion under F.R.Evid. 706 .

Appeals

A Notice of Appeal is electronically filed with the District Court in Idaho. The appointment of an attorney continues when the case is appealed. Counsel will receive a new voucher from the Ninth Circuit. If the case is appealed to a District Judge from a judgment rendered by the magistrate judge, a new voucher will be prepared by the District Court.

If the appointed attorney wishes to withdraw as counsel of record, a motion for withdrawal should be made to the Court of Appeals after the filing of the Notice of Appeal. If the Ninth Circuit grants the motion for withdrawal, a Magistrate Judge in Idaho may be asked to appoint new counsel. In this instance, the voucher will be prepared by the Idaho Clerk's Office and signed by the Magistrate Judge, but the voucher should be submitted to the Ninth Circuit for payment at the conclusion of the appeal.

Due to the unavailability of funds for duplication of files, it is the responsibility of the withdrawing counsel to provide the file (or copies) and any transcripts in their possession to newly appointed counsel. New counsel may also access the file using the Court's electronic case filing system.

The Appeal Briefing Schedule will be completed by the Ninth Circuit within a few days of the filing of the Appeal. Pursuant to Ninth Circuit Rule 28-3-1, opening briefs and responsive briefs are limited to no more than 35 pages. Appellant's optional reply brief is limited to 15 pages. Notice of these limitations, as well as the filing deadlines will be given in a Appeal Briefing Schedule prepared by the Clerk's Office.

CJA panel attorneys are referred generally to Federal Rules of Appellate Procedure 10 and Ninth Circuit Rule 10-3 for the duties of counsel with respect to transcript designation and ordering.

CJA Transcripts

For appeal purposes, CJA counsel shall contact the appropriate court reporter to order transcripts and shall file a Transcript Designation with the District Court.

For non-appeal purposes, CJA counsel should contact the appropriate court reporter to request an estimate of the cost for transcripts and file an appropriate motion with the court requesting payment of transcript fees by the CJA.

Reimbursement of Transcripts

The cost of court-authorized transcripts should be claimed on CJA Form #24.

The following steps should be followed:

1. Contact the Judge's Court Reporter or Court Electronic Sound Recorder responsible for reporting the hearing needed.
2. Prepare the CJA Form #24 requesting the transcript and forward to the appropriate Court Reporter. It will then be forwarded to the appropriate judge for approval.

Note: The Court cannot start work on the transcript until the Judge has signed the CJA 24 form authorizing the payment. Payment is made to the Court Reporter by the Clerk's Office.

Public Access to Court Transcripts

At its September 2007 session, the Judicial Conference approved a policy to make electronic transcripts of court proceedings available to the public.

Definitions

Sealed Not viewable by any party except for Court users.

Restricted Viewable only by Court users and those parties identified as a purchasing party of the transcript.

Redacted Transcript The Federal Rules require that personal information be redacted from documents filed with the Court. Therefore upon notice from the attorneys, the court reporter/transcriber will file a new transcript with those items redacted or removed.

Public Access Overview During the first 90-days after filing, access to the transcript is only available to court users and those parties having purchased a copy of the transcript from the court reporter/transcriber. Any other access to the document by non-court users is prevented for the initial 90 days.

Exception: The only exception during the initial 90-days is the transcript may be viewed (but not printed) by anyone at any public terminal in the courthouse.

For the purchasing party, they will have a copy of the transcript as well as the ability to gain access to the document via PACER

Transcript Redaction Process The Federal Rules require that personal information be redacted from documents filed with the Court. Therefore, upon filing of the original transcript, the attorneys must review the following portions of the transcript:

- opening and closing statements;
- statement of the party;
- testimony of witnesses, and
- any other portion of the transcript as ordered by the Court.

If an attorney requests, redactions may be made to the transcript during the initial 90-days before it becomes available to the public.

What are Personal Identifiers? The following items are personal identifiers that are protected by the Federal Rules:

- Social Security numbers (or taxpayer identification numbers), redact to the last four digits;
- financial account numbers, redact to the last four digits;
- dates of birth;
- individuals known to be minor children, redact to the initials; and
- any home addresses stated in court, redact to the city and state

While the court reporter/transcriber is authorized to redact the personal identifiers noted above. A party must receive a ruling of the court before other information in the transcript may be redacted.

Whose Responsibility to Identify Redaction Needs?

- The attorneys are responsible for identifying the information to be redacted even if the requestor is a judge or a member of the public/media.
- Court Reporters/Transcribers or Court Clerks are not responsible for the identification of the need to redact.